

Appl. No. 10/659,100
Atty. Docket No. 9031
Amtd. dated June 21, 2007
Reply to Office Action of March 23, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 6-10 are pending in the present application. No additional claims fee is believed to be due.

Claim 6 has been amended.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Claim Rejections

1) Claims 6, 8, and 10 are rejected under 35 USC §103(a) as being obvious over U.S. Patent No. 5,456,745.

The Office Action states Claims 6, 8 and 10 are rejected under 35 USC §103(a) over U.S. Patent No. 5,456,745 (hereinafter "Roreger"). To establish a prima facie case of obviousness the Office Action must state that the reference teachings "appear to have suggested the claimed subject matter" In re Wilder, 429 F.2d 447, 166 USPQ 545, 548 (C.C.P.A. 1970). The Office Action must explain why the reference suggests the claimed subject matter, rather than just general aspects of the claimed invention. "It is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification." In re Fine, 837 F2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

The Examiner states in the Office Action that Roreger discloses gel film compositions comprising at least one water-soluble polymer being anion active and one water-soluble polymer being cation active. The Examiner further states that the "reference differs from the instant claim insofar as it does not disclose an example with a whitening agent in combination with calcium phosphate, pyrophosphate or titanium dioxide." The Examiner concludes that "it would have been obvious in a self-evident manner to have selected hydrogen peroxide from one list and calcium phosphate or titanium dioxide from another, motivated by the unambiguous disclosure of each individually, and consistent with the basic

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principle of patent prosecution that a reference should be considered as expansively as is reasonable in determining the full scope of the contents within its four corners."

Applicants assert that Roreger fails to disclose all elements of the claimed invention. Roreger discloses use of the gel film on the skin, on the mucosal tissues of the mouth, and on plants etc. Roreger fails to disclose use of the gel film on the hard surfaces of the oral cavity; the teeth. As currently claimed the present invention is to be used on the teeth teeth. Roreger fails to disclose a gel film for use on the teeth. Additionally, Roreger fails to disclose a tooth whitening product wherein the dose of said tooth whitening agent per unit area is from about .001 mg/cm² to about 500 mg/cm². The Examiner points to the disclosure of hydrogen peroxide as a disclosure of a tooth whitening active. However, Roreger discloses hydrogen peroxide as a disinfectant and, therefore Roreger fails to disclose dosage of hydrogen peroxide to deliver tooth whitening results.

Applicants assert that the claims are not obvious in view of the cited reference, as the reference fail to disclose use of a film on the teeth, and any dosage of the tooth whitening agent.

2) Claim 7 is rejected under 365 USC §103(a) as being obvious under U.S. Patent No. 5,456,745 in view of U.S. Patent No. 6,146,655.

The Office Action states Claim 7 is rejected under 365 USC §103(a) as being obvious under U.S. Patent No. 5,456,745 ("Roreger") in view of U.S. Patent No. 6,146,655 ("Ruben"). Applicants assert that neither Roreger nor Ruben alone or in combination discloses all elements of Claim 6 from which Claim 7 depends. Therefore, the claimed invention is unobvious and that the rejection should be withdrawn.

Neither Roreger nor Ruben teach or suggest all of the claim elements of Claim 7 and, therefore, does not establish a prima facie case of obviousness (see MPEP 2143.03). The Office Action states that Ruben teaches oral bandages and drug delivery systems. The Office Action further states that the fibers have an individual length of at least 3mm, and preferably in the range of from about 2 mm to about 4mm.... "there should be at least one order of magnitude difference between the diameter and length of the fibers." The Office Action concludes that the fibers will have a diameter of 200 microns when the length of the fibers is 2mm. However, as stated in the Office Action "the reference differs from the instant claims

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insofar as it does not teach the fibers form a mesh and the compositions include a tooth-whitening agent." The Office Action concludes that "it would have been obvious to one of ordinary skill in the art to have used the fibers in the strips of the primary reference motivated by the desire to use material that would reinforce the gel compositions when wet and placed in the mouth as taught by the secondary reference."

Applicants assert that neither reference cited in the Office Action discloses a packaged tooth whitening product comprising a film to be used on the teeth having a dose of tooth whitening agent per unit area of from about .001 mg/cm² to about 500 mg/cm². Therefore, the references cited alone and/or in combination do not disclose each and every element of the claimed invention.

Conclusion

Early and favorable action in the case is respectfully requested. In view of the above, Applicants respectfully request reconsideration of the application and allowance of all of the claims.

Respectfully submitted,

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